UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KOLMAR GROUP AG, Plaintiff, - against - GILKES HOLDING GROUP, LTD. a/k/a GILKES HOLDING GROUP, INC. a/k/a GILKES HOLDING and ELCHIN MAMMADOV, Defendants,	:	09 CV 3229 (PKC) ECF CASE

DECLARATION OF CHAVDAR TZONEV

1. I am Director of Operations of the Plaintiff, Kolmar Group AG ("Kolmar"), which is a company based in Zug, Switzerland and is involved as a shipper of petrochemical products within the shipping industry.

2. I make this statement in response to the Order to Show Cause issued by this Court on or about October 20, 2009 requiring Kolmar to show cause why the process of maritime attachment previously issued in this matter ("the Attachment") should not be vacated or modified, all restrained funds released and the matter dismissed without prejudice in light of *Shipping Corp. of India v. Jaldhi Overseas Pte Ltd., Nos. 08-3477-cv(L), 08-3758-cv (XAP), (2d Cir. Oct. 16. 2009)* .

3. As Director of Operations at Kolmar I am fully aware of this attachment action, the underlying substantive action and the events which gave rise to Kolmar's claim against the Defendants.

4. The Court should decline to release the funds and/or property attached in this matter because Kolmar has relied to its detriment on the Second Circuits' various decisions

upholding the *Winter Storm* decision and because it has no other viable means to secure itself for its claims against the Defendants. In addition, if the funds are released Kolmar will be left entirely unsecured for its claims. The enforcement of the judgment it has already obtained in the English High Court against Defendant Gilkes Holding Group, Ltd. via default and the judgment by default it intends to obtain against Defendant Elchin Mammadov in this action based on his personal acknowledgment of debt to Kolmar is unlikely aside from this action inasmuch as Gilkes is a trading company that does not, to my knowledge, hold assets in the United Kingdom, Azerbaijan, the British Virgin Islands, the United States, or elsewhere. Further, the Defendant Mammadov is an individual believed to reside in Azerbaijan and Kolmar's prior efforts to secure its claim against real property believed to be owned by Mammadov within Azerbaijan was unsuccessful. Kolmar's efforts to locate assets of either Defendant in other jurisdictions have been unsuccessful.

5. Garnishee Standard Chartered Bank has restrained $16,500 of Defendant Gilkes Holding Group funds and Garnishees BNP Paribas, Citibank and Wachovia have restrained a total of $7,057 of Defendant Mammadov's funds in New York. In each instance it is believed that the funds that were restrained were being sent by the Defendants to third parties.

6. Relying on the fact that security has been obtained in New York (and that Kolmar would therefore not be pursuing empty judgments), Kolmar undertook the prosecution of its claim against Gilkes Holding Group Ltd in the English High Court and against Defendant Mammadov in New York. To date, Kolmar has paid approximately $ 103,000 in the form of English solicitors' fees and costs, U.S. counsel fees, Azerbaijani solicitors' fees and costs, and related costs in pursuing recoveries against these Defendants.

7. Kolmar's reliance on the decisions upholding *Winter Storm* was justified. Kolmar was also aware that the Second Circuit Court of Appeals upheld the *Winter Storm* decision in *Consub Del. LLC v. Schahin Engenharia Limitada*, 543 F.3d 104 (2d Cir. September 23, 2008) in continuing to proceed with its action against Gilkes in the High Court. In that case, it was made clear that *Winter Storm* would not be overruled and electronic funds transfers in the hands of an intermediary bank may be attached pursuant to Rule B. As a result, Kolmar relied on the fact that the security obtained via the attachment in New York would stay in place pending the resolution of the substantive matter.

8. As Kolmar: (1) justifiably relied on the Second Circuit's previous decisions upholding *Winter Storm*; (2) has spent a great deal of time, energy and money in prosecuting the underlying substantive action with the intention of enforcing a judgment against the funds attached in New York; and (3) Kolmar has no available other means of securing and/or enforcing its claims against the Defendants, the Court should decline to vacate the attachment and release the funds attached.

I declare under penalty of perjury and the laws of the United States of America that the foregoing is true and correct.

Executed at Zug, Switzerland this 10th day of November 2009.

Chavdar Tzonev